

# Indiana Department of State Revenue

## Revenue Ruling #2005-01IT

January 27, 2005

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### ISSUE

Corporate Adjusted Gross Income Tax—Domestic International Sales Corporation

Authority: IRC § 991; IRC § 992; § IRC 993; IC 6-3-1.3.5(b); IC 6-3-2-1(b).

The shareholders of the taxpayer request the Department to rule on the application of taxes administered under IC 6-3 concerning the treatment of a Domestic International Sales Corporation (DISC).

### STATEMENT OF FACTS

The taxpayer is a corporation. The shareholders are contemplating the formation of a DISC, as defined in IRC § 992. The DISC will have an Indiana domicile and will receive qualified export receipts, as defined in IRC § 993, from affiliates of the corporation. Under IRC § 991, the DISC will not be subject to federal income tax.

### DISCUSSION

IRC § 991 states that a DISC is not subject to income taxes. A **Domestic International Sales Corporation** is defined in IRC § 992(a)(1) as:

For purposes of this title, the term "DISC" means, with respect to any taxable year, a corporation which is incorporated under the laws of any State and satisfies the following conditions for the taxable year:

- (A) 95 percent or more of the gross receipts (as defined in section 993(f)) of such corporation consist of qualified export receipts (as defined in section 993 (a)),
- (B) the adjusted basis of the qualified export assets (as defined in section 993(b)) of the corporation at the close of the taxable year equals or exceeds 95 percent of the sum of the adjusted basis of all assets of the corporation at the close of the taxable year,
- (C) such corporation does not have more than one class of stock and the par or stated value of its outstanding stock is at least \$2,500 on each day of the taxable year,
- (D) the corporation has made an election pursuant to subsection (b) to be treated as a DISC and such election is in effect for the taxable year, and

(E) such corporation is not a member of any controlled group of which a FSC is a member.

IC 6-3-1.3.5(b) defines **adjusted gross income** for corporations. The calculation of adjusted gross income is tied to the federal Internal Revenue code—subject to modifications imposed by Indiana's tax code. None of those modifications encompass DISCs. IC 6-3-2-1(b) states the tax rate to be imposed on a corporation's adjusted gross income derived from sources within Indiana. Because IRC § 991 does not impose income tax on a DISC and because Indiana does not impose a modification on DISC adjusted gross income, the corporate taxpayer is not subject to Indiana adjusted gross income tax.

### **RULING**

The Department rules that to the extent that the DISC is not subject to federal income taxes under IRC § 991, the DISC also would not be subject to Indiana adjusted gross income tax pursuant to IC 6-3-1-3.5 and IC 6-3-2-1.

### **CAVEAT**

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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